

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**IN RE 2014 RADIOSHACK ERISA
LITIGATION**

MASTER FILE NO. 4:14-cv-00959-O

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**NOTICE OF SETTLEMENT AND EXPEDITED JOINT UNOPPOSED MOTION, AND
BRIEF IN SUPPORT, FOR STAY OF ALL PROCEEDINGS WITH RESPECT TO
DEFENDANTS WELLS FARGO AND BANCO POPULAR**

Plaintiffs Manoj P. Singh, Jeffrey Snyder, and William A. Gerhart (collectively, “Plaintiffs”); and Defendants Wells Fargo Bank, NA (“Wells Fargo”) and Banco Popular de Puerto Rico (“Banco Popular”) (and collectively with Wells Fargo, the “Trustee Defendants”),¹ hereby notify the Court of the settlement of all claims against the Trustee Defendants and move for entry of a stay of all proceedings against the Trustee Defendants in the above-captioned case (the “Action”), except those related to the implementation of a settlement. The Parties respectfully request expedited consideration of the stay of all proceedings only as to the Trustee Defendants given that, under the Court’s scheduling order (Dkt. No. 107), the Trustee Defendants will be attending Plaintiff Singh’s deposition on Wednesday, December 2, 2015, and the Trustee Defendants’ expert reports regarding class certification are due on December 3, 2015. In support of their Joint Motion, the Plaintiffs and Trustee Defendants state as follows:

1. Plaintiffs and the Trustee Defendants have participated in a series of telephonic discussions, which culminated in a face-to-face mediation session before a well-known and

¹ Plaintiffs and the Trustee Defendants are collectively referred to as the “Parties.”

respected mediator on November 24, 2015, John Bickerman of Bickerman Dispute Resolution, PLLC.² As a result of the settlement discussions and mediation session, Plaintiffs and the Trustee Defendants have signed a Term Sheet that outlines the principal terms of the Settlement of the Action as against the Trustee Defendants. If requested, the Parties will provide the Court with a copy of the Term Sheet for *in camera* review.

2. The Plaintiffs and Trustee Defendants have agreed to draft and finalize a comprehensive settlement agreement and file it with the Court, along with all required pleadings in support of a motion for preliminary approval, no later than December 21, 2015. In particular, in connection with their motion for preliminary approval, Plaintiffs will present to the Court a proposed form of notice of the settlement to be disseminated to the settlement class, a proposed plan of allocation for the distribution of the settlement proceeds to the settlement class, and asking for a final fairness hearing date to consider all aspects of the settlement. If the Court grants final approval of the settlement, the Trustee Defendants will be dismissed from this Action.

3. The Plaintiffs and Trustee Defendants respectfully request that, in light of the settlement of all claims as against the Trustee Defendants, the Court order that any and all proceedings and deadlines be stayed with respect to the Trustee Defendants, except those necessary to the implementation of a settlement.

4. This Court has the power to stay proceedings, as “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also* Wright, Miller & Kane, Federal Practice and

² See <http://www.bickerman.com/home>.

Procedure: Civil 2d § 2901, Vol. 11, p. 491 (West 1995) (“Stays prior to judgment, to await a decision in another forum, or for some other purpose . . . are left to the inherent power of the court”). In determining whether a stay is proper, courts consider the interests of the parties and potential conservation of judicial resources and “must weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 254-55. And, courts routinely stay litigation during the settlement approval process. *See, e.g., Vodanovich v. BOH Bros. Const. Co., LLC*, No. CIV.A. 05-4191, 2013 WL 1155219, at *9 (E.D. La. Mar. 19, 2013) (staying all claims against the released parties pending final approval of a class settlement); *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 641 (N.D. Tex. 2010), as modified (June 14, 2010), judgment entered (June 18, 2010), enforcement denied, No. 7:03-CV-102-D, 2011 WL 2413318 (N.D. Tex. June 15, 2011) (staying case so the parties could pursue settlement); *see also Rodger v. United States*, No. 05-cv-2406-D, 2008 WL 336383, at *3 (N.D. Tex. Feb. 5, 2008) (noting “this court frequently stays dispositive rulings when *both* sides seek such relief so that they can pursue settlement negotiations”) (emphasis in original); *Murillo v. Texas A & M Univ. Sys.*, 921 F. Supp. 443, 445 (S.D. Tex. 1996) (observing that the court entered a stay pending negotiation and approval of a class action settlement). A stay of the Action as to Wells Fargo and Banco Popular is proper because: (i) it will allow the Parties to devote their energies towards drafting and finalizing the settlement agreement and all pleadings associated with a class action settlement, (ii) it will allow the Parties to avoid spending unnecessary resources in litigating settled claims.

5. As a condition of the Settlement, the Trustee Defendants required that the Court stay all proceedings against them. This is a material term of the proposed Settlement. Plaintiffs have agreed to this condition in light of certain other concessions by the Trustee Defendants. Thus, in order to begin to effectuate the Settlement and, subsequent to the Court’s approval of

the Settlement provide the Settlement's benefit to the Class Members, Plaintiffs have filed this motion.

6. The stay of proceedings also does not apply to any of the non-settling parties: Defendants Administrative Committee of the RadioShack 401(k) Plan, Administrative Committee of the RadioShack Puerto Rico 1165(e) Plan, James F. Gooch, Joseph C. Magnacca, Robert E. Abernathy, Frank J. Belatti, Julia A. Dobson, Daniel A. Feehan, H. Eugene Lockhart, Jack L. Messman, Thomas G. Plaskell, Edwina D. Woodbury, Mark Barfield, Karina Davis, Eric Hales, Justin Johnson, Michael Keyser, Kevin Krautkramer, Martin Moad, and Sri Reddy.

WHEREFORE, for the reasons stated above, the Parties respectfully request that this Court enter the Order Staying All Proceedings as Against the Trustee Defendants submitted contemporaneously herewith.

Dated: November 25, 2015

Respectfully Submitted,

/s/ Roger L. Mandel

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CERTIFICATE OF CONFERENCE PURSUANT TO L.R. 7.1(b)

This Motion is unopposed. On November 25, 2015, counsel for Wells Fargo asked counsel for the non-settling Defendants via email their position regarding Plaintiffs and the Trustee Defendants' motion for a stay. Counsel for the non-settling Defendants responded by email on November 25, 2015 indicating that the non-settling Defendants do not oppose the motion.

/s/ Mark K. Gyandoh
Mark K. Gyandoh (*admitted Pro Hac Vice*)

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2015, I electronically filed the foregoing with the clerk of Court using the CM/ECF system, which will send a notification to all counsel of record in this Action.

/s/ Roger L. Mandel

Roger L. Mandel